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Filing date: **08/14/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |  |
|---------------------------|--|
| Proceeding                | 92056009   |
| Party                     | Plaintiff<br>North Country Seed, LLC   |
| Correspondence<br>Address | BRENT E ROUTMAN<br>MERCHANT & GOULD PC<br>PO BOX 2910<br>MINNEAPOLIS, MN 55402-0910<br>UNITED STATES<br>broutman@merchantgould.com |
| Submission                | Motion to Amend Pleading/Amended Pleading  |
| Filer's Name              | Brent E. Routman   |
| Filer's e-mail            | broutman@merchantgould.com   |
| Signature                 | /ber/  |
| Date                      | 08/14/2012   |
| Attachments               | Amended Petition to Cancel BETTER LIFE.pdf ( 5 pages )(120519 bytes )  |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

|  |   |                                 |
|--|---|---------------------------------|
| North Country Seed, LLC .                      | ) |                                 |
|  | ) |                                 |
| Petitioner                                     | ) | Cancellation No. 92056009 _____ |
|  | ) |                                 |
| vs.  | ) | Mark: BETTER LIFE               |
|  | ) |                                 |
| DK International Food A/S Aktieselskap (A/S) ) | ) |                                 |
|  | ) | Reg. No. 3,488,943              |
| Registrant                                     | ) |                                 |
|  | ) |                                 |

**AMENDED PETITION TO CANCEL**

North Country Seed, LLC a Limited Liability Company, having its principal place of business at 501 Main St., P.O. Box 548, Ormsby, Minnesota 56162 (hereinafter referred to as “Petitioner”), believes that it is, or will be, damaged by the continued existence of Registration No. 3,488,943 for the mark BETTER LIFE owned by DK International Food A/S Aktieselskap (A/S) (hereinafter referred to as “Registrant”), and hereby petitions to cancel said registration.

The grounds for cancellation are as follows:

1. Petitioner, North Country Seed, LLC is a Limited Liability Company, duly organized and existing under the laws of the State of Minnesota.
2. Upon information and belief, Registrant, DK International Food A/S Aktieselskap (A/S), is a company organized and existing under the laws of Denmark, and doing business at Niels Bohrs Vej 45 Stilling; DK-8660 Skanderborg DENMARK.
3. Registrant has obtained a registration on the Principal Register for the mark BETTER LIFE, Registration No. 3,488,943, for “Dairy products excluding ice cream, ice milk and frozen yogurt; cheese and soy milk, namely soy-based food beverage used as a milk substitute” alleged

to have been filed on May 16, 2007, allegedly claiming benefit and priority to a Danish application filed on May 1, 2006.

4. Registration No. 3,488,943 has as its sole registration basis in the United States Section 66 (a) based on International Registration 0935083.

5. Since at least as early as March 16, 1989, Petitioner, or its predecessors in interest, has used the mark BETTER LIFE, or marks incorporating the words BETTER LIFE, in connection with farm products and farm product services, namely, unprocessed field grain and grain brokerage services.

6. Petitioner is the owner of the following federal registrations for the mark BETTER LIFE, or marks incorporating the mark BETTER LIFE, Registration Nos. 1575374 and 3771535 for “unprocessed field grain and grain brokerage services” in Classes 31 and 36.

7. The marks shown in the Petitioner’s registrations and the date of first use of the mark in the marketplace or application has a first use date, constructive use date, or filing date prior to the filing date of the Registrant’s registration or any earlier date of actual use of the mark shown in the Registrant’s registration upon which Registrant can rely.

**FIRST CLAIM FOR RELIEF**  
**(Likelihood of Causing Confusion, Mistake, or Deceiving With A Mark Previously Used in the United States by Another and Not Abandoned)**

7. Petitioner repeats and realleges the allegations contained in preceding paragraphs 1-6, inclusive, as if fully set forth herein.

8. The mark shown in the registration sought to be cancelled so resembles the "BETTER LIFE" mark previously used in the United States by the Petitioner, when used or in connection with the goods identified in the registration sought to be cancelled, to cause confusion, to cause

mistake, or to deceive, and Registrant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

9. Petitioner will be damaged by the continued registration of the mark shown in the registration sought to be cancelled because continued registration will give Registrant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the registration sought to be cancelled, in derogation of Petitioner's rights in its "BETTER LIFE" marks.

**SECOND CLAIM FOR RELIEF**  
**(Likelihood of Causing Confusion, Mistake, or Deceiving With Registered Trademarks)**

10. Petitioner repeats and realleges the allegations contained in preceding paragraphs 1-9, inclusive, as if fully set forth herein.

11. The mark shown in the registration sought to be cancelled so resembles the mark shown in Reg. Nos. 1575374 and 3771535 as to be likely, when used on or in connection with the goods identified in the registration sought to be cancelled, to cause confusion, to cause mistake, or to deceive, and Registrant's mark is thus unregistrable under § 2(d) of the United States Trademark Act, 15 U.S.C. §1052(d), as amended.

12. Petitioner will be damaged by the registration of the mark shown in the Registrant's registration because continued registration will give Applicant prima facie evidence of the validity of its confusingly similar mark and the exclusive nationwide right to use its confusingly similar mark in commerce in connection with the goods identified in the registration sought to be cancelled, in derogation of Petitioner's rights in its registered marks.

13. Petitioner repeats and realleges the allegations contained in preceding paragraphs 1-7, inclusive, as if fully set forth herein.

15. Petitioner is likely to be damaged by Registrant's continued registration of "BETTER LIFE," because Petitioner will likely be denied registration for its viable trademark, "BETTER-LIFE," even though Registrant has abandoned its mark.

Please charge the filing fees for this application to Deposit Account No. 13-2725 and direct all correspondence and communications to the undersigned.

Merchant & Gould, P.C.  
P.O. Box 2910  
Minneapolis, Minnesota 55402-0910  
Telephone: (612) 332-5200

By: \_\_\_\_\_/ber/\_\_\_\_\_  
Brent E. Routman

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I hereby certify that a true and correct copy of the foregoing AMENDED PETITION TO CANCEL was served upon the Registrant, DK International Food A/S Aktieselskap (A/S), by mailing a copy of the Amended Petition to Cancel to the Registrant Niels Bohrs Vej 45 Stilling; DK-8660 Skanderborg DENMARK and to its counsel *Lawrence E. Abelman*, Abelman Frayne & Schwab 666 Third Avenue New York, NY 10017 via First Class mail prepaid this 14<sup>th</sup> day of August 2012.

\_\_\_\_\_/ber/\_\_\_\_\_  
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